ALLAHABAD HIGH COURT

Raja Ram

Vs.

Mata Prasad

Civil Revn. No. 2043 of 1965. against judgment and order of S. Prasad, Munsif, Mirzapur
(S.N. Dwivedi, J., S. Trivedi and R.L. Gulati, JJ.)

16.10.1965. 27.10.1971

JUDGMENT

Dwivedi, J.

1. There was one Dwarka Prasad. He held two policies on his life from the Oriental Government Life Assurance Company Limited. One was effected on October 10, 1945; the other on March 2, 1951. The applicants before us obtained a decree for payment of money against him. They put it into execution. But he died. So they tried to substitute Mata Prasad and Vishwanath Prasad as his legal representatives and to execute the decree by attachment of the amounts payable to them as nominees under the aforesaid policies. The court below rejected the application. Hence this revision.

2. In the policy of 1945 Dwarka Prasad nominated Mata Prasad and Vishwanath Prasad as his nominees on July 11, 1951. It was made on the back of the policy. The company registered it on July 25, 1951. The nomination is made materially in these words: "I ..... nominate ..... to be the persons to whom the moneys secured by the policy shall be paid in the event of my death."

3. In the policy of 1951 the nomination was made on the date the policy was effected. The nomination is expressed materially in these words: "Names of nominees Mata Prasad and Vishwanath Prasad." They will receive the money payable under the policy in the event of his death.

4. On the face of the two policies we have a printed schedule. The schedule has a column in respect of the persons to whom the sum assured is payable. The column reads materially. "The proposer's Assigns or Nominees or his proving Executors or Administrators or other legal Representatives"

5. Presumably Mata Prasad and Vishwanath Prasad are the nephews of Dwarka Prasad. If the amounts payable to them under the two policies constitute a part of the estate of Dwarka Prasad, surely they are his legal representatives, and the decree shall be executed against them to the

extent of these amounts; if the said amounts do not form part of the estate of Dwarka Prasad, they are not his legal representatives and the amounts cannot be reached by the decree-holders.

6. Whether the said sums form part of the estate of Dwarka Prasad, not depends, in the first instance, on the implications of certain provisions of the Insurance Act, 1938 (hereinbelow called the Act) under which the policies were issued, and, in the second instance, on the language of the nomination.

7. We shall first turn to the Act. Section 2(11) defines 'life insurance business' as the business of effecting contracts of insurance upon human life. So insurance is a contract between the insurer and the assured. Under the contract the assured is entitled to a certain benefit, that is, to the payment of a definite amount. The contract together with the benefit arising under it forms part of his assets. On his becoming an insolvent it will vest in the Receiver appointed by the Insolvency Court. So the contracts vouched by the two policies formed part of the assets of Dwarka Prasad during his life. Section 38 also shows that the policies were his property. We have now to see whether the contracts together with the benefit arising under it formed part of the estate of Dwarka Prasad at the moment of his death, notwithstanding the nomination in favor of Mata Prasad and Vishwanath Prasad.

8. Section 38 deals with the assignment of policies. The assured may assign, with or without consideration, his policy to anyone. Assignment operates as a transfer inter vivos. It transfers the interest of the assured in the policy to the assignee. After assignment the interest of the assured comes to an end, and the assignee or his legal representative becomes entitled to the money payable under the policy. As at his death, the assured has no interest in the policy, it does not constitute his estate. But Section 39, which is the key section, does not pass the interest of the assured in the policy to the nominee in the lifetime of the assured.

9. Section 39, in so far as it is material to the case, reads:

> "(1) The holder of a policy of life insurance on his own life may nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death .....
> (2) ... any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a will .....
> (4) A transfer or assignment of a policy made in accordance with Section 38 shall automatically cancel a nomination.
> (5) Where the policy matures for payment during the life time of the person whose life is insured or where the nominee, or, if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy-holder or his heirs or legal re-preventatives or the holder of a succession certificate .....
> (6) Where the nominee, or if there are more nominees than one, a nominee or nominees

survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors" (emphasis added).

10. Let us analyse these provisions now. The expression 'in the event of his death' in sub-section (1) shows that the policy-holder continues to hold interest in the policy till the moment of his death. If the policy matures for payment in his life time, the benefit arising thereunder shall be his, and not that of his nominee.

11. Sub-section (2) enables the assured to cancel or change or re-change the nomination. So if he has nominated by endorsement a person named X, he may cancel the nomination, or nominate Y. The power of cancelling or changing the nomination shows that nomination does not pass the interest of the assured to the nominee during the life of the assured. Sub-section (2) is significant for yet another reason. It enables the assured to cancel or change the nomination by will. Now a will is inarticulate in the life-time of the testator; it speaks post-humously. So it follows necessarily from sub-section (2) that the assured holds interest in the policy at the moment of his death in spite of the nomination.

12. Sub-section (4) declares that a transfer or assignment of policy under Section 38 will ipso facto cancel the nomination. It also shows that during the life-time of the assured the nominee has no interest at all in the policy.

13. Sub-section (5) also fortifies our view. According to it, if the policy matures for payment in the life-time of the assured, the money secured by the policy is paid to the policy-holder and not to the nominee. Similarly, where the nominee or all the nominees die in the lifetime of the assured, the money secured by the policy will be paid to the assured or his heirs or legal representatives. The money will not be paid in that event to the heirs or legal representatives of the deceased nominee or nominees.

14. Sub-section (6) is also significant. According to it, where one or more of the nominees die in the life-time of the assured, the money secured by the policy will be paid to the surviving nominee or nominees; it will not be paid to the heirs or legal representatives of the deceased nominee or nominees. It suggests that the nominee does not get a title to the money secured by the policy.

15. The result of our survey of the material provisions is: 1. The policy-holder continues to hold interest in the policy till the moment of his death.

2. The nominee under Section 39 acquires no interest in the policy in the lifetime of the policy-holder.
3. The benefit secured by the policy forms part of the estate of the deceased policy-holder.
As it is part of his estate, his creditors can realize their loans from the money paid to the

nominee. He will be the legal representative of the deceased policy-holder.

16. Our opinion is supported by *Amar Das v. Dadu Dayalu Mahasabha*[1], *Smt. Shanti Devi v. Ramlal*[3], *Ram Ballav v. Gangadhar*[2], *D.M. Mudaliar v. Indian Insurance and Banking Corpn.*[4], *Mahadara Brahmamma v. Kandula v. Venkataramana Rao, Sarojini Amma v. Neelakanta Pillai*[6], and *Life Insurance Corporation v. United Bank*[7],

17. Counsel for Mata Prasad and Vishwanath Prasad has relied on *Mithan Lal v. Maya*

[1] *AIR 1953 All 721* [3] *AIR 1958 All 569*; [5] *AIR 1957 And Pra 757*
[2] *AIR 1956 Cal 275* [4] *AIR 1957 Mad115* [6] *AIR 1961 Ker126 (FB)*
[7] *AIR 1970 Cal 513*

Devi[8], *Gobardhan Mukharji v. Saligram Marwari*[9],
and *Mrs. S. Misra v. S.M. Mangala Kumari Devi*[10], They are all cases of assignment and have no bearing on the case before us.

18. In *Kesari Devi v. Dharma Devi*[11], the facts are different. There the contest was between the widow of the assured and the widow of the nominee. Two learned Judges of our Court took the view that on the death of the assured the nominee became entitled to the money secured by the policy and that on his death his widow was entitled to it in preference to the widow of the assured. That precise problem does not arise in the case before us. Here the issue is whether the creditor of the deceased assured can satisfy his decree for money against the assured by seizing the money payable under the policy to the nominee. We have already answered this issue in the affirmative. And it is not necessary to deal with the precise problem arising in Kesari Devi.

19. The nominations in the two policies do not create a trust in favor of the nominees. They do not create any vested interest in them in the life-time of the assured. On the other hand, the policies clearly show that the assured continued to hold title to the policies until his death. The amounts due under the policies were payable to the nominees only in the event of his death. So the nominees will be his legal representative, and the money may be seized by the decree-holder for payment of his loan.

20. The revision is allowed. Mata Prasad and Vishwanath Prasad are impleaded as the legal representatives of the deceased judgment-debtor, Dwarka Prasad.
Revision allowed.

[8] AIR 1929 All 444 [10] AIR 1946 Pat 415
[9] AIR 1936 Pat 123 [11] AIR 1962 All 355